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Attorneys for Alleged Judgment Debtor
Park & Velayos LLP

FILED & ENTERED

OCT 31 2017

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY bakchell DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA LOS ANGELES DIVISION

IN RE

ARKLAND INVESTMENT, LLC,

Debtor,

HEIDI KURTZ, the duly appointed and
acting Chapter 7 Trustee of the estate of
Arkland Investment, LLC, a Nevada
limited liability company,

Plaintiff,

vs.

SIXTH AND VIRGIL, LLC et al.,

Defendants.

CASE NO.: 2:12-14433-RK

Chapter 7

Adv. No.: 2:17-AP-01479-RK

**ORDER RE: MOTION TO DISMISS
CLAIMS OF UNIVERSAL BANK
AND/OR TO ENJOIN FURTHER
PROCEEDINGS AGAINST THE
FUNDING PARTIES**

Hearing Date: October 24, 2017

Hearing Time: 3:00 p.m.

Place: Courtroom 1675

**ORDER RE: MOTION TO DISMISS CLAIMS OF UNIVERSAL BANK
AND/OR TO ENJOIN FURTHER PROCEEDINGS AGAINST THE
FUNDING PARTIES**

1 On October 24, 2017, the motion of Park & Velayos LLP to dismiss claims
2 of Universal Bank and/or to enjoin further proceedings against the Funding Parties
3 (“Motion to Dismiss”) came on for hearing in the above-captioned court.

4 Jim D. Bauch appeared for Park & Velayos LLP. Anthony Rothman
5 appeared for Universal Bank. Ernesto Aldover appeared for Daniel Niemann.

6 The Court, having considered the papers and the arguments of counsel,
7 ordered as follows:

8 The Motion to Dismiss is GRANTED with leave to amend, for the reasons
9 stated in the Tentative Ruling attached as Exhibit A to this Order, which is adopted
10 as the final ruling.

11 On or before November 28, 2017, Universal Bank may file an amended
12 motion that will not include evidence and only allegations.

13 Park & Velayos LLP and Daniel Niemann may file a response to such
14 amended pleading on or before December 19, 2017.

15 The Court has found this matter to be a contested matter, and subject to the
16 requirements of the Federal Rules of Bankruptcy Procedure discovery.
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24 Date: October 31, 2017



25 Robert Kwan
26 United States Bankruptcy Judge
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**ORDER RE: MOTION TO DISMISS CLAIMS OF UNIVERSAL BANK
AND/OR TO ENJOIN FURTHER PROCEEDINGS AGAINST THE
FUNDING PARTIES**

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, October 24, 2017

Hearing Room 1675

3:00 PM

2:12-14433 Arkland Investment LLC

Chapter 7

Adv#: 2:17-01479 Kurtz v. SIXTH AND VIRGIL, LLC et al.

#34.00 Hearing re: Motion to dismiss claims of Universal Bank and/or to enjoin further proceedings against the funding parties

Docket 9

Tentative Ruling:

Grant funding parties' motion to dismiss bank's claim to add judgment debtors with leave to amend. Contrary to bank's assertion, the general rule under California Code of Civil Procedure § 187 to amend a judgment to add a defendant that both (1) the new party must be the alter ego of the old party and (2) that the new party had controlled the litigation, thereby having had the opportunity to litigate, in order to satisfy due process concerns. *Katzir's Floor and Home Design, Inc. v. M-MLS.com*, 394 F.3d 1143, 1148 (9th Cir. 2004), citing *Triplett v. Farmers Insurance Exchange*, 24 Cal.App.4th 1415 (1994). The motion in its current form only asserts the latter when the general rule requires both to be pleaded. However, having said that, the court notes that *In re Levander*, 180 F.3d 1114 (9th Cir. 1999), citing with approval, *Carr v. Barnabey's Hotel Corp.*, 23 Cal.App.4th 14 (1994), held that the alter ego requirement of California Code of Civil Procedure § 187 is not required in certain exceptional circumstances in order to prevent a fraud on the court. See also, *In re Roussos*, 541 B.R. 721 (Bankr. C.D. Cal. 2015). Bank's claim that funding parties so dominated and controlled the state court litigation in the trustee's name that it would be a fraud on the court is factually inadequate to support a cognizable claim, and the court would grant leave to bank to plead something more substantial.

Funding parties' claim of immunity as acting as agent on behalf of the bankruptcy estate seems to require a factual determination of whether or not they went beyond the scope of lending to the estate as implicitly approved by the bankruptcy court in approving employment of special counsel to the trustee in the state court litigation. That is, their argument is overstated in that as recognized by the *Ninth Circuit in In re Crown Vantage, Inc.*, 421 F.3d 963,

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CONT... Arkland Investment LLC

Chapter 7

(9th Cir. 2005), the thrust of the Barton doctrine is to require bankruptcy court leave before action against the bankruptcy trustee or other officer appointed by the bankruptcy court to sue such party in a nonbankruptcy forum for acts done in an official bankruptcy capacity. Thus, the court would not grant the motion to dismiss based on immunity.

Party Information

Debtor(s):

Arkland Investment LLC

Represented By
Jeremy Faith
Elizabeth Jiang

Defendant(s):

SIXTH AND VIRGIL, LLC et al.

Pro Se

Plaintiff(s):

Heidi Kurtz

Pro Se

Trustee(s):

Heide Kurtz (TR)

Represented By
Carmela Pagay
Timothy J Yoo